IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2675 of 2001

The Brihanmumbai Municipal)
Corporation, a Statutory authority,)
duly constituted under the)
provisions of the Mumbai Municipal)
Corporation Act, 1888, through the)
General Manager, Bombay Electric)
Supply and Transport Undertaking)
having his office at BEST Bhavan,)
BEST Marg, Mumbai - 400 001.).. Petitioner

Versus

1. The General Secretary,)
BEST Workers' Union,)
42, Kennedy Bridge,)
Mumbai - 400 004.)

2. Vasant M. Parab,)
Ex-Bus Conductor No.196621,)
C/o.BEST Workers' Union,)
42, Kennedy Bridge,)
Mumbai - 400 004.).. Respondents

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Shri S.K.Talsania with Smt.R.N.Vora i/b Crawford Bayley & Co. for the Petitioner.

None present for the Respondents, though served.

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Coram : R.M.S.Khandeparkar, J

Dated : 12th August, 2004.

ORAL JUDGMENT :

1. Heard the learned Advocate for the petitioner. None present for the respondents, though served.

2. The petitioner challenges the judgment and order passed by the Labour Court on 8th March, 2001 in Application (BIR) (REIN) No.59 of 1997 as well as the judgment and order dated 18th June, 2001 passed by the Industrial Court in Appeal (IC) No.31 of 2001 in so far as it relates to the interference by the Labour Court and the Industrial Court in the matter of quantum of punishment imposed upon the respondent No.2, who had been found to have misappropriated certain amount of money by causing false entry in relation to the opening account on 4th October, 1996 in the ticket memo.

3. The facts in brief relevant for the decision are that the respondent No.2 was employed as Bus Conductor in the Undertaking of the petitioner since December, 1993. He was chargesheeted for the misconduct under Standing Order Nos.20(c) i.e. theft, fraud and dishonesty in connection with the business of the Undertaking, 20(j) i.e. gross negligence and 20(k) i.e. breach of rules or regulations or instructions for the maintenance and running of any department. On account of having found concealed the sale of 59 tickets of Rs.3/- denomination amounting to Rs.177/- by overwriting the figures of the ticket memo in respect of the last numbers thereof, the fulfledge departmental enquiry was held and the Enquiry Officer, on consideration of the materials on record before him and on consideration of the statements of the rival parties, arrived at the conclusion that the respondent No.2 was guilty of the charge under Standing Order No.20(c), while holding that other two charges were not proved and even after taking into consideration the past record, which was found to be free from blemish, considering the seriousness of the misconduct proved against the respondent No.2, observed that the respondent No.2 was not fit to be retained in service of the petitioner as Bus Conductor. The Labour Court in the proceedings under Sections 78 and 79 of the Bombay Industrial Relations

Act, 1946 in the Application (BIR)(REIN) No.59 of 1997 rejected the challenge of the respondent No.2 to the finding of the Enquiry Officer regarding the charge of misappropriation and dishonesty on the part of the respondent No.2 having been proved, and also confirmed that the enquiry was fair and just, however, the Labour Court interfered with the punishment sought to be imposed upon the respondent No.2 and while setting aside the order of dismissal of the respondent No.2 directed reinstatement with continuity of service without back wages.

4. Being aggrieved by the said order dated 8th March, 2001 passed by the Labour Court, the petitioner preferred the appeal before the Industrial Court which came to be dismissed by order dated 18th June, 2001, while modifying the order of the Labour Court thereby reducing the Respondent No.2 in grade by one step permanently. Simultaneously, the appeal filed by the respondent No.1 was dismissed. Hence the present petition.

5. The contention of the learned advocate for the petitioner is that the Courts below erred in ignoring the seriousness of the proved misconduct on the part of the respondent No.2 while dealing with the issue relating to the quantum of punishment and also exceeded its jurisdiction in interfering with the punishment imposed by the management on the

respondent No.2. Taking into consideration the seriousness of the proved misconduct, it was sought to be contended that irrespective of the quantum of amount misappropriated, it should not be forgotten that the respondent No.2 was Bus Conductor in the Undertaking of the petitioner and in his capacity as Conductor, he had to deal with the job of collecting money from the passengers, to maintain proper account in that regard, and the evidence on record having established that the respondent No.2 intentionally caused false entry in the ticket memo and thereby misappropriated the petitioner's money, and it is difficult to trust such person, having it lost once, on account of seriousness of the proved misconduct by him, both the Courts below erred in ordering reinstatement of the respondent No.2 in the service while interfering with the punishment imposed on the Respondent No.2 by the Management. Reliance in that regard is sought to be placed in **Janatha Bazar (Sough Kanara Central co-op.Wholesale Stores Ltd.) Etc. v. Secretary , Sahakari Noukarara Sangha Etc.,** reported in (2000) II CLR 568.

6. Upon hearing the learned advocate for the petitioner and on perusal of the record, it is seen that the Labour Court had clearly arrived at the finding that the evidence on record establishes that the figures mentioned by the respondent No.2 in the ticket memo were intentionally written and further

that on account of the said false entry in the ticket memo by the respondent No.2, there was misappropriation of a sum of Rs.177/- of the petitioner by the respondent No.2. The said finding has been confirmed by the lower Appellate Court. There is no challenge to the said finding. It is also a matter of record and undisputed fact that the enquiry before the Enquiry Officer was just and fair, and the findings, which are arrived at by the Enquiry Officer, are neither perverse nor illegal. Being so, the misconduct alleged against the respondent No.2 stands sufficiently proved with the cogent evidence on record.

7. The only challenge in the petition before this Court and the interference which is called for in this petition relates to the issue of punishment imposed upon the respondent No.2 for the proved misconduct. Both the Courts below have set aside the order of dismissal solely on the ground that the misconduct proved against the respondent No.2 is only in relation to the single entry and the misappropriation is of the amount of Rs.177/-. Considering the same, both the Courts have held that the punishment of dismissal of the respondent No.2 would be disproportionate to the gravity of misconduct. Apart from the fact, as rightly submitted by the learned Advocate for the Petitioner, that when a person is entrusted with the job relating

to money matters of the employer and the materials brought on record clearly establish intentional act of misappropriation of money on the part of employee, then the employer cannot be expected to trust such person and the same could certainly justify an action of dismissal of such person from the service. The peculiar facts and circumstances of the case in hand which clearly established misappropriation of money by the respondent No.2 would justify such an action. There is a clear finding of the Labour Court, confirmed by the Industrial Court, that the false entry in the ticket memo was made by the respondent No.2 "intentionally". Once falsification of records is made intentionally by the employee, it can hardly be said that the misconduct is of minor nature. When such act is committed intentionally, the quantum of amount of misappropriation would be irrelevant. The conduct of the employee which is done with an intention to cause loss to the employer cannot be considered as minor offence more so when the same is committed by the person entrusted with a job relating to money matters of the employer. The Conductor of a vehicle is always engaged with a job of collecting money from the passengers and submitting the accounts thereof to the employer. If, in the process of performing his duty, such a person intentionally falsifies the records, even for once or even in relation to a small or negligible amount, the act could be considered as a misconduct sifficient to

warrant punishment of dismissal from the service, as, any such act could be breach of trust and would result in loss of confidence in such person by the employer.

8. The Apex Court in **Janatha Bazar's case (supra),** after referring to its earlier decisions, in **Municipal Committee, Bahadurgarh v. Krishnana Behari & Ors.,** reported in (1996) 2 SCC 714 in **U.P.State Road Transport Corporation v. Basudeo Chaudhary & Anr.,** reported in (1997) 11 SCC 370, and in **Punjab Dairy Development Corporation Ltd. & Anr. v. Kala Singh & Ors.,** reported in (1997) 6 SCC 159, has clearly ruled that "once act of misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled for sympathy and reinstating the employees in service. Law on this point is well settled."

9. In **Janatha Bazar's case,** the Labour Court had held that the charge against the workmen for breach of trust and misappropriation of funds entrusted to them for the value mentioned in the charge sheet was established, but after arriving at the said finding, the Labour Court had set aside the order passed by the Management removing the workmen from service and had ordered reinstatement of those workmen with 25% backwages. The said order was confirmed by the High Court. Disapproving the same,

it was held by the Apex Court that in case of proved misappropriation, there is no question of considering past record and it is the discretion of the employer to consider the same in appropriate cases but the Labour Court cannot substitute the penalty imposed by the employers in such cases.

10. Indeed, in **U.P. Basudeo Chaudhary's case (supra),** which was in relation to the misconduct by the Conductor, who had caused loss of Rs.65/- to the Corporation by issuing tickets to 23 passengers for a sum of Rs.2.35 but recovering at the rate of 5.35 per head and simultaneously by making entry in the waybill as having received the amount of Rs.2.35 and further altering it as Rs.2.85 per head, it was held that it was not possible to say that the Corporation by removing the Conductor from service had imposed a punishment which was disproportionate to his misconduct.

11. Apparently, the case in hand is no way different from that of the Conductor of U.P.State Road Transport Corporation. In the said case, the amount misappropriated was only of Rs.65/- and in the case in hand, the misappropriation is of Rs.177/-. Nevertheless, the misconduct proved is of similar nature and is of similar gravity. As rightly submitted by the learned advocate for the petitioner company, both the Courts below erred in taking undue

sympathetic view in the matter in relation to the punishment imposed by the Corporation, considering the nature of the proved misconduct of the respondent No.2.

12. In the result, therefore, the petition succeeds. The impugned orders passed by the Courts below insofar as and to the extent they relate to the interference with the quantum of punishment imposed by Undertaking on the respondent No.2 is concerned, the same are hereby quashed and set aside, and the punishment imposed upon the respondent No.2 by the Undertaking for the proved misconduct is hereby confirmed. Rule is made absolute accordingly with no order as to costs.